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Economic and Social Council

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Committee on Economic, Social and Cultural Rights

Concluding observations on the second periodic report of China, including Hong Kong, China, and Macao, China*, **

1. The Committee on Economic, Social and Cultural Rights considered the second periodic report of China (E/C.12/CHN/2), including the third periodic report of Hong Kong, China (E/C.12/CHN-HKG/3), and the second periodic report of Macao, China (E/C.12/CHN-MAC/2), on the implementation of the International Covenant on Economic, Social and Cultural Rights at its 17th and 18th meetings (see E/C.12/2014/SR.17–18), held on 8 May 2014, and adopted, at its 40th meeting, held on 23 May 2014, the following concluding observations.

A. Introduction

2. The Committee welcomes the timely submission of the second periodic report of the People's Republic of China, including Hong Kong, China, and Macao, China. The Committee also takes note with appreciation of the written replies which it received to its list of issues (E/C.12/CHN/Q/2/Add.1, E/C.12/CHN/Q/2/Add.2 and E/C.12/CHN/Q/2/Add.3) and welcomes the constructive dialogue held with the State party's delegation, composed of experts from many ministries, including representatives of Hong Kong, China, and Macao, China.

B. Positive aspects

3. The Committee welcomes the State party's ratification of the following instruments:

(a) The Convention on the Rights of Persons with Disabilities, in August 2008;

(b) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in February 2008;

(c) The International Labour Organization (ILO) Convention No. 111 (1958), concerning Discrimination in Respect of Employment and Occupation, in January 2006;

* The present concluding observations comprise three parts: part one (paras. 1–38) relating to China; part two (paras. 39–52) relating to Hong Kong, China; and part three (paras. 53–60) relating to Macao, China.

** Adopted by the Committee at its fifty-second session (28 April–23 May 2014).

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(d) The United Nations Convention against Corruption, in January 2006.

4. The Committee takes note with appreciation of the State party's measures to promote economic, social and cultural rights, which included:

(a) The adoption of the Law on Social Insurance in October 2010;

(b) The adoption of the Employment Promotion Act in 2007;

(c) The adoption and implementation of the National Human Rights Action Plan (2012–2015);

(d) The adoption and implementation of the 12th Five-year Social and Economic Development Plan (2011–2015);

(e) The adoption and implementation of the New Outline for Development-Oriented Poverty Reduction Program for China's Rural Areas (2011-2020);

(f) The adoption and implementation of the first National Employment Promotion Plan (2011–2015).

5. The Committee welcomes the State party's contribution to the accomplishment of various targets of the Millennium Development Goals, such as the eradication of extreme poverty, the achievement of universal primary education and the reduction of maternal mortality. The Committee encourages the State party to continue to strive for the full achievement of the Millennium Development Goals.

6. The Committee takes note with appreciation of the measures adopted by Hong Kong, China, to promote economic, social and cultural rights, which included:

(a) The adoption of a statutory minimum wage in 2011;

(b) The establishment of the high-level Commission on Poverty in December 2012 and the introduction of the first official poverty line.

7. The Committee also takes note with appreciation of the measures adopted by Macao, China, to promote economic, social and cultural rights, which included:

(a) The implementation of the 15-year free education scheme;

(b) The adoption of the Law on Individual Provident Fund Accounts in 2012, which consolidates retirement protection for residents.

C. Principal subjects of concern and recommendations: China

National human rights institution

8. The Committee takes note of the information provided by the State party on the establishment of 25 new government institutions with similar functions to those of a national human rights institution. However, the Committee remains concerned about the absence of an independent national human rights institution in accordance with the Principles relating to the status of national human institutions for the promotion and protection of human rights (Paris Principles). The Committee recalls that government institutions do not replace such an institution (art. 2).

The Committee recommends that the State party establish an independent national human rights institution with a broad mandate to promote and protect human rights, including economic, social and cultural rights, in line with the Paris Principles, and provide it with adequate financial and human resources.

Domestic applicability of the Covenant

9. The Committee remains concerned that, despite the efforts made by the State party to harmonize the domestic legislation with the Covenant, not all the provisions thereof have been incorporated into domestic legislation and are therefore not directly applicable by national courts and tribunals.

The Committee recommends that the State party guarantee the direct applicability of all rights under the Covenant in its domestic legal order. The Committee also recommends that the State party raise awareness of the content of the Covenant rights and their justiciability, in particular among judges, lawyers and law enforcement officials, as well as the members of the National People's Congress and other actors responsible for the implementation of the Covenant, and among rights holders. The Committee also draws the State party's attention to its general comment No. 9 (1998) on the domestic application of the Covenant.

Independence of the judiciary

10. The Committee is concerned about reports of basic gaps in the independence of the judiciary in the State party. The Committee is also concerned about the lack of adequate training on human rights, including economic, social and cultural rights, for judges, lawyers and law enforcement officers.

The Committee urges the State party to take all necessary legislative and administrative measures to guarantee the full independence and impartiality of the judiciary. The Committee recommends that the State party provide systematic training to judges, lawyers and law enforcement personnel on all human rights, including economic, social and cultural rights.

Corruption

11. While taking note of the State party's efforts to combat corruption, the Committee remains concerned about the prevalent and widespread corruption in the State party, which has a negative impact on the realization of economic, social and cultural rights, particularly at the provincial and municipal levels (art. 2, para. 1).

The Committee recommends that the State party:

(a) Enact domestic legislation to incorporate the United Nations Convention against Corruption, ratified by the State party in 2006;

(b) Ensure that public affairs, in law and in practice, are conducted in a transparent manner;

(c) Step up awareness-raising campaigns for members and officials of the National People's Congress, the State Council, the local people's congresses and people's governments, at all levels, as well as the organs of self-government of the national autonomous areas, on the economic and social costs of corruption, and emphasize the need for the strict application of anti-corruption legislation by judges, prosecutors and law enforcement officers;

(d) Undertake independent and impartial investigations into all cases of corruption, no matter whether small or systemic, and hold those responsible accountable.

International cooperation

12. While the Committee welcomes the fact that, in the framework of international cooperation, the State party has provided economic and technical assistance to over 2,100

projects in more than 120 developing countries, the Committee is concerned that some of those projects have reportedly resulted in violations of economic, social and cultural rights in the receiving countries (arts. 2 and 11).

The Committee calls upon the State party to adopt a human rights-based approach to its policies of international cooperation, by:

(a) Undertaking a systematic and independent human rights impact assessment prior to making funding decisions;

(b) Establishing an effective monitoring mechanism to regularly assess the human rights impact of its policies and projects in the receiving countries and to take remedial measures when required;

(c) Ensuring that there is an accessible complaint mechanism for violations of economic, social and cultural rights in the receiving countries.

Business and economic, social and cultural rights

13. The Committee is concerned about the lack of adequate and effective measures adopted by the State party to ensure that Chinese companies, both State-owned and private, respect economic, social and cultural rights, including when operating abroad (art. 2, para. 1).

The Committee recommends that the State party:

(a) Establish a clear regulatory framework for companies operating in the State party to ensure that their activities promote and do not negatively affect the enjoyment of economic, social and cultural human rights;

(b) Adopt appropriate legislative and administrative measures to ensure the legal liability of companies and their subsidiaries operating in or managed from the State party's territory regarding violations of economic, social and cultural rights in the context of their projects abroad.

The Committee draws the attention of the State party to its statement on the obligations of States parties regarding the corporate sector and economic, social and cultural rights (E/2012/22, annex VI, sect. A).

Non-discrimination

14. Despite the incorporation of the principle of non-discrimination in the State party's Constitution and in other laws, the Committee regrets that the State party does not have a comprehensive anti-discrimination law that protects all marginalized and disadvantaged individuals and groups in their enjoyment of economic, social and cultural rights. Furthermore, the Committee is concerned about the persistent and widespread discrimination against ethnic minorities, particularly in the western provinces and regions, especially in the fields of employment, social security, housing, health and education, in spite of efforts taken by the State party (art. 2.2).

The Committee urges the State party to take all necessary measures to adopt comprehensive anti-discrimination legislation in line with article 2, paragraph 2, of the Covenant. The Committee recommends that the State party strengthen its efforts to combat all forms of discrimination against ethnic minorities, particularly in the western provinces and regions, and to ensure their enjoyment of all economic, social and cultural rights, including legal work, social security, adequate housing, public health care, and education. In this regard, the Committee draws the State party's attention to its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights.

Household registration system

15. While noting that the State party has taken some measures to reform the household registration system (*hukou*) and progressively align the situation of rural-to-urban migrant workers with that of urban residents, the Committee remains concerned that these migrant workers, particularly those who lack household registration, continue to be de facto discriminated against in the fields of employment, social security, health care and education. The Committee is deeply concerned that, reportedly, owing to the *hukou* system, an estimated number of 55 to 60 million children have been left behind by their parents in the rural areas (arts. 2, para.2; and 10).

The Committee reiterates its previous recommendation (E/C.12/1/Add.107, para. 46) and calls upon the State party to strengthen its efforts to abolish the household registration system (*hukou*) and to ensure that all rural-to-urban migrants are able to enjoy the work opportunities, as well as social security, housing, health and education benefits, enjoyed by residents in urban areas. The Committee urges the State party to take all necessary effective family-support measures to avoid the separation of children from their family environment and to ensure that children, particularly those from rural areas, can be raised by their parents.

Equal treatment of men and women

16. The Committee regrets that, despite the legislative changes to ensure equality between men and women and the adoption of the Programme for the Development of Chinese Women (2011–2020), gender disparities persist in practice, especially in relation to employment, wages, housing and access to higher education. The Committee also notes with concern the disadvantaged position of rural women, in particular with regard to access to education, health care, employment and land tenure (arts. 3 and 7).

The Committee recommends that the State party:

(a) Adopt effective measures to ensure the strict enforcement of the Law on the Protection of the Rights and Interests of Women;

(b) Take concrete steps to eliminate the persistent disparities between men and women and promote full access to higher education, employment and housing;

(c) Adopt all necessary measures, with specific targets and a time frame, to eliminate the persistent gender wage gap;

(d) Take measures to eliminate the multiple discrimination faced by rural women, in particular in access to education, health care, employment and land tenure.

Unemployment

17. The Committee regrets that the statistical data on unemployment are not currently disaggregated by ethnic origin, which limits the evaluation of the situation faced by ethnic minorities in their enjoyment of the right to work. Despite the efforts mentioned by the State party in its replies to the list of issues (E/C.12/CHN/Q/2/Add.1, para. 44), the Committee remains concerned about reports of the high rate of unemployment among persons belonging to ethnic minorities, especially Tibetans, Uighurs and Inner Mongolians, in part due to Han Chinese migration into minority areas (arts. 6 and 7).

In line with its previous recommendations (E/C.12/1/Add.107, para. 67), the Committee urges the State party to strengthen its unemployment data collection system in order to enable a better assessment of the situation of ethnic minorities. The Committee recommends that the State party strengthen its programmes and adopt

effective strategies to reduce unemployment rates, with special attention to minorities, and in regions where unemployment is most severe.

Persons with disabilities

18. The Committee is concerned that, despite the measures undertaken by the State party to promote access to employment and improve the working conditions of persons with disabilities, including through the establishment of the 1.5 per cent employment quota, the high rate of unemployment among persons with disabilities persists and that the existing disparities in relation to wages have not been effectively addressed (arts. 6 and 7).

The Committee urges the State party to enhance its efforts to promote effectively the integration of persons with disabilities, especially into the labour market, including by strengthening the effectiveness of the system of job quotas and establishing an efficient enforcement procedure and remedies. The Committee also recommends that the State party take effective measures to improve the working conditions of persons with disabilities, including through establishing an obligation to provide reasonable accommodation in the workplace and introducing the principle of equal pay for work of equal value. The Committee requests that the State party provide disaggregated statistical data on the employment rate of persons with disabilities.

Minimum wage

19. The Committee notes that discretionary authority to establish minimum wages is delegated to municipal and provincial governments, and expresses concern about the lack of a transparent system of indexation and adjustment. The Committee is also concerned that in some municipalities and provinces the minimum wage is insufficient to ensure a decent living for workers and their families (art. 7).

The Committee calls upon the State party to ensure that an effective and transparent system of indexation and regular adjustment of the minimum wage is established and at a level sufficient to provide all workers and their families with a decent standard of living.

Working conditions

20. The Committee is concerned about information on inadequate and unsafe working conditions, including instances of injury and death, the non-signature of labour contracts and insufficient medical and accident insurance, particularly in the private and informal sectors (art. 7).

In line with its previous recommendation (E/C.12/1/Add.107, para. 53), the Committee urges the State party:

(a) To adopt all necessary measures to ensure just and favourable conditions of work, especially for workers in the private sector;

(b) To take measures to regularize the situation of informal sector workers by progressively improving their working conditions and including them in the social security system;

(c) To ensure that all categories of workers have access to medical and accident insurance, as well as to adequate compensation for injuries and work-related diseases;

(d) To establish an effective and independent inspection mechanism for monitoring the conditions of work and provide it with adequate human and financial resources;

(e) To fully investigate allegations of violations of the labour law and to take effective action against those found to be in breach of the law.

Sexual harassment in the workplace

21. The Committee notes with deep concern that, despite the adoption of the Special Rules on the Labour Protection of Female Employees to prevent sexual harassment, sexual harassment in the workplace still frequently occurs in the State party (art. 7).

The Committee urges the State party to take all appropriate measures to address the problems of sexual harassment in the State party and ensure the full implementation of the Special Rules on the Labour Protection of Female Employees. The Committee recommends that the State party incorporate sexual harassment in the workplace in its criminal legislation.

Forced labour

22. While noting with satisfaction the Decision of the Standing Committee of the National People's Congress on Repealing Legislation on Re-education through Labour, as was recommended in its previous concluding observations (E/C.12/1/Add.107, para. 51), the Committee remains concerned about the lack of effective implementation of this decision, particularly at the municipal and provincial levels (arts. 6 and 7).

The Committee urges the State party to take all necessary measures to ensure the effective implementation of the decision of the National People's Congress on the abolishment of the Re-education through Labour system throughout the State party, as well as to ensure that no alternative or parallel system of forced labour is put in place, particularly at the local level.

Trade union rights

23. The Committee remains concerned that workers cannot freely exercise their right to form and join trade unions outside the structure of the All China Federation of Trade Unions. The Committee is also concerned that the Trade Union Law does not provide for the right of workers to strike. The Committee is further concerned that the State party has not withdrawn its declaration on article 8, paragraph 1, of the Covenant (art. 8).

The Committee reiterates its previous recommendation (E/C.12/1/Add.107, para. 55) that the Trade Union Act be amended to allow workers to form independent trade unions, both within and outside the structure of the All China Federation of Trade Unions. The Committee also recommends that the State party consider the legal recognition of the right to strike. In addition, the Committee strongly urges the State party to consider withdrawing its declaration on article 8, paragraph 1, of the Covenant.

Access to social security

24. The Committee welcomes the efforts made by the State party to grant universal access to social security, including basic old-age pensions, basic medical care and the minimum living standard scheme (*di bao*). However, the Committee is concerned about the significant persistence of disparities between the urban and rural populations and among rural-to-urban migrant workers, in relation to access to and the quality and amount of benefits (art. 9).

Recalling its previous recommendation (E/C.12/1/Add.107, para. 56) and its general comment No. 19 (2008) on the right to social security, the Committee urges the State party:

(a) To strengthen its efforts to extend the coverage of the social security system, especially to individuals belonging to ethnic minorities, to rural residents and rural-to-urban migrants, as well as to informal sector workers;

(b) To adopt the necessary measures to ensure that the amount of social assistance benefits is sufficient to cover the real costs of living, including by setting up an effective and transparent indexation system;

(c) To undertake information and awareness-raising campaigns throughout the country to inform beneficiaries about the programmes and initiatives in place to promote their access to, and enjoyment of their right to, social security.

Family planning

25. The Committee, while welcoming the decision to revise the "one-child policy" by allowing couples to have a second child when one of the parents is an only child, remains concerned that there continue to be restrictions on the opportunity for persons to freely decide on the number of children they have (art. 10).

The Committee recommends that the State party take all necessary measures, including the revision of its family planning policies, to ensure that everyone can freely and responsibly decide on the number and spacing of their children. The Committee further urges the State party to step up its efforts to raise awareness on modern contraceptive methods and to provide age-appropriate education on sexual and reproductive health.

26. The Committee, while noting information provided by the State party that the Population and Family Planning Law prohibits the use of coercive measures for the implementation of the birth quota, remains seriously concerned about reported instances of the use of coercive measures, including forced abortion and forced sterilization, with a view to limiting births (arts. 10 and 12).

The Committee urges the State party to take further action to prevent and criminalize effectively the use of coercive measures, such as forced abortions and forced sterilization, in the implementation of the birth control policy. The Committee urges the State party to investigate effectively, without further delay, all cases of forced abortion and forced sterilization and to hold accountable those responsible for such acts. The Committee also recommends that the State party take all necessary measures to ensure that victims receive adequate compensation.

Domestic violence

27. The Committee is concerned that, in spite of the matter being under consideration for several years, the State party has still not adopted specific legislation criminalizing domestic violence. The Committee is also concerned about the lack of effective measures to prevent instances of domestic violence, as well as the lack of support services to protect victims (art. 10).

The Committee recommends that the State party speed up the process of adoption of specific legislation on domestic violence and categorize such acts as criminal offences. The Committee urges the State party to take all necessary effective measures to prevent incidents of domestic violence and to protect all victims by providing adequate access to shelters for immediate physical protection, legal aid and medical services, as well as to remedies and compensation. The Committee also urges the State

party to undertake information campaigns in order to increase public awareness, and to provide training to law enforcement officials and judges on the serious and criminal nature of domestic violence.

Poverty reduction and economic, social and cultural rights in remote areas

28. The Committee remains concerned that, despite the significant progress made by the State party in alleviating poverty, large disparities in living standards between regions and between urban and rural areas still persist. The Committee is also concerned about the poor living conditions of rural-to-urban migrants (art. 11).

The Committee recommends that the State party, in implementing the New Outline for Development-Oriented Poverty Reduction Program for China's Rural Area, pay particular attention to shortfalls and the differentials existing between the regions, as well as between urban and rural areas. The Committee also recommends that the State party ensure that poverty reduction programmes prioritize and allocate sufficient resources to alleviate the poverty of rural-to-urban migrants. The Committee requests the State party to include in its next periodic report disaggregated and comparative data by year and urban region, as well as indicators on the number of persons living in poverty, and on the progress made in its efforts to combat poverty.

Right to adequate food

29. The Committee is concerned about the situation of food insecurity in some of the poor rural areas, particularly in the western mountainous areas, and about the persistence of child malnutrition, mainly in rural areas and in the Tibet Autonomous Region. Despite the efforts made by the State party to strengthen food safety supervision, including through the adoption of the Food Safety Law, the Committee remains concerned about the shortcomings in the implementation of that Law (art. 11).

The Committee urges the State party to strengthen its efforts to protect the right to adequate food. The Committee recommends that the State party step up its efforts to address effectively the situation of food insecurity and child malnutrition in poor rural areas, particularly in the western mountainous areas and in the Tibet Autonomous Region. The Committee recommends that the State party take all necessary measures to enforce the Food Safety Law effectively, to strengthen its efforts with regard to food safety supervision and to ensure the production, processing, distribution, marketing and consumption of safe food. The Committee draws the State party's attention to its general comment No. 12 (1999) on the right to adequate food and to the recommendations of the Special Rapporteur on the right to food (A/HRC/19/59/Add.1, paras. 40–46).

Forced evictions

30. The Committee regrets that the State party has failed in implementing its previous recommendation (E/C.12/1/Add.107, para. 61) and is seriously concerned about the information received on the thousands of forced evictions carried out with inadequate or no notice in the State party. While noting the adoption of the 2011 Regulations on the Expropriation of Houses on State-owned Land and Compensation, prohibiting the use of violence and granting urban home-owners facing eviction the rights to consultation and informed consent, adequate compensation and effective legal remedies, the Committee remains concerned about the lack of effective implementation of those regulations (art. 11).

The Committee urges the State party to immediately take all necessary measures to cease all expropriations that do not fully comply with the established international

human rights standards. The Committee urges the State party to guarantee the right to appeal in domestic courts to the affected individuals and households, and to provide effective legal remedies, adequate compensation and guarantees of adequate alternative housing.

The Committee also urges the State party to ensure that any relocation necessary for city renewal is carried out after prior consultation with the affected individuals and households, with their free, prior and informed consent and with full respect for their safety and dignity following an appropriate and transparent procedure.

The Committee further draws the State party's attention to its general comment No. 7 (1997) on the right to adequate housing (article 11, paragraph 1, of the Covenant): forced evictions.

Resettlement of nomadic persons

31. The Committee is concerned about the resettlement of nomadic herdsmen in the "new socialist villages" carried out in the State party without proper consultation and in most cases without free, prior and informed consent, particularly in the western provinces and autonomous regions (arts. 1 and 11).

The Committee urges the State party to take all necessary measures to immediately halt non-voluntary resettlement of nomadic herders from their traditional lands and non-voluntary relocation or rehousing programmes for other rural residents. The Committee recommends that the State party carry out meaningful consultations with the affected communities in order to examine and evaluate all available options.

Pollution, ecological degradation and health care

32. The Committee remains concerned about the adverse environmental effects of industrial pollution and about food contamination, and their negative impact on the enjoyment of the right to an adequate standard of living and health. The Committee is also concerned that, despite the measures adopted to mitigate ecological degradation, environmental pollution and food contamination, the implementation and monitoring of those measures remain inadequate, and administrative authorities and private companies are not held accountable for contravening environmental legislation (arts. 11 and 12).

The Committee urges the State party to strengthen its efforts to address environmental threats that affect the health and the adequate standard of living of the population, and thereby the enjoyment of their economic, social and cultural rights. The Committee recommends that the State party adopt all necessary measures to enforce its environmental regulations effectively, impose necessary sanctions and provide adequate compensation to those negatively affected.

Right to health

33. Despite the increase in the budget allocation to health care, the Committee remains concerned about the inadequacy of funding, which particularly affects rural areas and exacerbates the persistent disparities in access to public health-care services between urban and rural areas and within regions. The Committee notes with concern that, owing to the household registration system (*hukuo*), rural-to-urban migrant workers do not have equal access to medical care subsidies with urban residents, and pay proportionately more for medical insurance and medical costs (art. 12).

The Committee recommends that the State party:

(a) Undertake all necessary measures to improve its health-care services and to guarantee the enjoyment of the right to good quality and affordable health car . to

all persons throughout the State party, particularly to disadvantaged and marginalized individuals, ethnic minorities and rural-to-urban migrants;

(b) Increase the budgetary allocations to the health sector and ensure their equitable distribution among the provincial, municipal and local authorities;

(c) Strengthen training for health-care professionals by implementing a national plan to develop human resources in the health-care sector.

The Committee refers the State party to its general comment No. 14 (2000) on the right to the highest attainable standard of health.

Persons with HIV/AIDS

34. Despite the adoption of regulations to eliminate the persistent discrimination against persons affected by HIV/AIDS, the Committee is concerned that persons living with HIV/AIDS still face social stigmatization from the public at large, as well as discrimination in employment, in education and, particularly, in access to health care, including refusal of treatment. The Committee is also concerned about the lack of adequate measures taken by the State party to prevent HIV/AIDS and other infectious diseases, particularly in rural areas (arts. 2, para. 2; and 12).

The Committee recommends that the State party:

(a) Take effective measures to repeal or amend laws and policies that perpetuate the stigmatization and rejection of persons living with HIV/AIDS and adversely impact on any progress made in combating HIV;

(b) Take all necessary measures to ensure the appropriate access of persons living with HIV/AIDS to health care, employment and education on an equal basis with others;

(c) Take adequate measures to prevent the spread of HIV/AIDS, in particular among groups at risk and in rural areas;

(d) Undertake awareness-raising activities aimed at promoting understanding of the modes of transmission of HIV and tolerance towards persons living with HIV/AIDS among medical staff, employers and the population at large and measure the impact thereof.

Access to education

35. While welcoming the efforts made by the State party to reach the goal of 4 per cent of gross domestic product (GDP) expenditure on education and the establishment of nine years of free compulsory education, the Committee notes with concern that unequal geographic distribution of funds is increasing the disparities in access to, and availability of, education between urban and rural areas. The Committee is also concerned that compulsory education is still not free and is often unaffordable for children in rural areas and poor urban areas. In addition, the Committee notes that the costs for secondary education are excessively high, being one of the main factors associated with dropout, particularly among children from ethnic minorities and children of rural-to-urban migrant workers (arts. 13 and 14).

The Committee recommends that the State party:

(a) Take appropriate measures to ensure the equal distribution of funds with a view to ensuring equal access to, and availability of, education in urban and rural areas;

(b) Ensure that the nine years of compulsory public education is free;

(c) Take all necessary measures to make secondary education, including technical and vocational education, generally available and accessible to all;

(d) Take all necessary measures to reduce dropout rates for children belonging to ethnic minority groups and children of rural-to-urban migrant workers;

Cultural rights of ethnic minorities

36. The Committee is concerned that ethnic minorities continue to face severe restrictions in the realization of their right to take part in cultural life, including the right to use and teach minority languages, history and culture, as well as to practise their religion freely. Despite the measures adopted by the State party, the Committee is concerned about the restrictions faced by Tibetans and Uighurs, in particular regarding the restriction of education in the Tibetan and Uighur languages (art. 15).

The Committee recommends that the State party take all necessary measures to ensure the full and unrestricted enjoyment by minorities, including Tibetans, Uighurs and Inner Mongolians, of their right to enjoy fully their own cultural identity and take part in cultural life, and to ensure the use and practice of their language and culture. The Committee also recommends that the State party take adequate measures to protect cultural diversity and promote awareness of the cultural heritage of ethnic, religious and linguistic minorities.

Cultural rights and freedom of expression and information

37. The Committee is concerned about the lack of information on measures taken by the State party to prevent limitations on freedom of information and expression in the State party which may hinder the realization of the right to take part in cultural life and to benefit from technological and scientific progress (art. 15).

The Committee reiterates its previous recommendation (E/C.12/1/Add.107, para. 68) and urges the State party to take effective measures to remove restrictions on freedom of expression and information in the State party, and to enable all persons under its jurisdiction to take part in cultural life, enjoy the benefits of scientific progress and its applications, and benefit from the protection of the moral and material interests resulting from any scientific, literacy or artistic production of which they are the authors.

Respect for rights of labour and human rights activists and their lawyers

38. The Committee is concerned at reports of instances where labour and human rights activists, and their lawyers, have been victims of repression and reprisals when taking up cases of violations of economic, social and cultural rights (arts. 2, 10, 12 and 13).

The Committee urges the State party to protect human rights and labour activists, as well as their lawyers, against any form of intimidation, threat or retaliation for taking up cases of violations of economic, social and cultural rights, and to ensure full respect for their own economic, social and cultural rights. The Committee also urges the State party to guarantee that human rights and labour activists, as well as their lawyers, have adequate access to health care in all circumstances, and that their children fully enjoy the right to education. The Committee also calls on the State party to ensure that all allegations of reprisals and abuse are promptly and thoroughly investigated, and that perpetrators are brought to justice.

D. Principal subjects of concern and recommendations: Hong Kong, China

Domestic applicability of the Covenant

39. The Committee notes with concern that, according to article 39 of the Basic Law of Hong Kong, China, the provisions of the Covenant as applied to Hong Kong shall be implemented through the laws of the Hong Kong Special Administrative Region. The Committee therefore notes with regret that the Covenant has not been incorporated in the legislation of the Special Administrative Region and that its provisions are thus not directly applicable by courts and tribunals.

The Committee recommends that Hong Kong, China, take all appropriate measures to incorporate the provisions of the Covenant in domestic legislation and to guarantee their direct applicability by the domestic courts.

National human rights institution

40. The Committee notes that the Equal Opportunities Commission has a limited mandate and regrets that Hong Kong, China, has not taken any further steps to establish an independent national human rights institution (art. 2.1).

The Committee urges Hong Kong, China, to establish a national human rights institution with a broad mandate to promote and protect human rights, including economic, social and cultural rights, in line with the Paris Principles, and to provide it with adequate financial and human resources.

Non-discrimination

41. The Committee is concerned about the prevalent and widespread discrimination against some disadvantaged and marginalized groups, such as migrants and internal migrants, asylum-seekers and refugees, as well as on the grounds of sexual orientation and gender identity, particularly in employment, education, health care and housing. The Committee notes with concern the absence of comprehensive anti-discrimination legislation and regrets that the Race Discrimination Ordinance does not include discrimination on the grounds of nationality, citizenship, resident status or the length of residence in Hong Kong, China (art. 2, para. 2).

The Committee recommends that Hong Kong, China, take steps to adopt comprehensive anti-discrimination legislation in compliance with article 2, paragraph 2, of the Covenant and taking into account the Committee's general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights. The Committee reiterates its previous recommendation (E/C.12/1/Add.107, para. 91) and urges Hong Kong, China, to eliminate the widespread discriminatory practices against migrants and internal migrants from other parts of China. The Committee also urges Hong Kong, China, to take adequate measures to ensure that lesbians, gays, bisexual and transgender persons are able to fully enjoy their economic, social and cultural rights without any discrimination.

Refugees and asylum seekers

42. The Committee is concerned that the absence of comprehensive legislation granting protection to refugees and asylum seekers prevents them from enjoying economic, social and cultural rights, particularly in accessing legal employment, vocational training and adequate housing (arts. 6 and 11).

The Committee recommends that Hong Kong, China, adopt legislation on asylum-seekers and refugees in order to improve their enjoyment of economic, social and

cultural rights, granting them access to legal employment, including vocational training, and adequate housing.

Migrant domestic workers

43. The Committee is concerned about the unfavourable working conditions faced by migrant domestic workers in Hong Kong, China, particularly due to the "two-week rule", whereby migrant domestic workers have to leave the territory within two weeks upon termination of their contracts, as well as the requirement for migrant domestic workers to live in the employing household. The Committee regrets that Hong Kong, China, has not taken any concrete measures to repeal these rules, and that migrant domestic workers are therefore exposed to abuse and exploitation. Furthermore, the Committee is concerned about the exclusion of migrant domestic workers from the Minimum Wage Ordinance, social security and maternity leave protection (arts. 7 and 10).

The Committee recommends that Hong Kong, China:

(a) Adopt a comprehensive law to regulate domestic work and ensure that migrant domestic workers enjoy the same conditions as other workers regarding remuneration, protection against unfair dismissal, rest and leisure, limitation of working hours, social security and maternity leave protection;

(b) Take immediate action to repeal the two-week rule and the live-in requirement and eliminate conditions that render migrant domestic workers vulnerable to compulsory labour and sexual assault;

(c) Provide effective mechanisms for reporting abuse and exploitation in light of the difficulty some domestic workers have in accessing telecommunications services;

(d) Establish an inspection mechanism for monitoring the conditions of work of domestic workers, in particular migrant workers.

Trade union rights

44. The Committee notes with concern that, despite the recognition of the right to strike, trade unionists dismissed for participating in a strike cannot be reinstated, and can only claim for compensation. The Committee regrets that Hong Kong, China, has not adopted legislation on collective bargaining (art. 8).

The Committee strongly recommends that, in line with its obligations under article 8 of the Covenant, Hong Kong, China, take all necessary measures to amend the Employment Ordinance to allow the reinstatement of trade unionists arbitrarily dismissed for participating in trade-union activities. The Committee also recommends that Hong Kong, China, accelerate the process of adopting legislation on collective bargaining.

Residence requirement for applicants for social security

45. While noting the information provided by Hong Kong, China, on the recent ruling by the Court of Final Appeal, declaring unconstitutional the seven-year residence requirement for applicants for social security benefits under the Comprehensive Social Security Assistance Scheme, the Committee remains concerned about the limited scope of the implementation of such decision. The Committee also regrets that, under the seven-year residence requirement, new immigrants, including those from other parts of China, have been exposed to unreasonable restrictions in accessing social security benefits (art. 9).

The Committee recommends that Hong Kong, China, take all necessary measures to repeal any residence requirement for applicants under the Comprehensive Social Security Assistance Scheme, taking into account that it provides a safety net, and ensure that all individuals and families, particularly new immigrants, including those from other parts of China, have equal access to social security schemes on a non-discriminatory basis.

Comprehensive Social Security Assistance Scheme

46. The Committee is concerned that the Comprehensive Social Security Assistance Scheme may not provide adequate protection to low-income families and persons with disabilities (art. 9).

In line with its previous recommendation (E/C.12/1/Add.107, para. 96), the Committee recommends that Hong Kong, China, take immediate steps to review the eligibility criteria for the Comprehensive Social Security Assistance Scheme and to ensure that all persons in need are entitled to the benefits thereof.

Right of abode policies

47. The Committee continues to be concerned about the adverse impact of right of abode policies, which impose restrictions on residents of other parts of China with regard to obtaining residence permits, and cause many families to be separated (art. 10).

The Committee urges Hong Kong, China, to guarantee and facilitate family reunification for all citizens and permanent residents irrespective of their status or background. The Committee further urges Hong Kong, China, to remove present obstacles for mothers residing in other parts of China to obtaining residence permits to visit their children in Hong Kong, China, thereby ensuring the widest possible protection of, and assistance to, the family.

Poverty reduction and economic, social and cultural rights

48. While noting the establishment of the Commission on Poverty, an official poverty line and the Low-income Working Family Allowances, the Committee regrets that Hong Kong, China, has not adopted a comprehensive strategy or specific targets for poverty alleviation. The Committee is also concerned about the unequal distribution of wealth in Hong Kong, China (art. 11).

The Committee recommends that Hong Kong, China, formulate and implement effective policies and specific targets to reduce poverty, including by reducing inequalities in the distribution of wealth. In this regard, the Committee refers the State party to its 2001 statement on poverty and the Covenant (E/C.12/2001/10).

Adequate housing

49. The Committee is concerned about the inadequate investment of Hong Kong, China, in providing affordable and adequate housing, resulting in a high percentage of the population living in informal settlements, industrial buildings, cage-homes and bed-space apartments, which do not have adequate services and utilities (art. 11).

The Committee recommends that Hong Kong, China, adopt a human rights approach to reconstruction efforts, thereby ensuring appropriate consideration to the availability, affordability and adequacy of housing, including temporary housing for new immigrants and single applicants.

Mental health and lack of medical personnel in the public health sector

50. Despite the efforts made to improve the access to and coverage of mental health services, the Committee is concerned about the lack of a comprehensive mental health policy in Hong Kong, China. The Committee is also concerned that, despite the expansion of hospitals, there is a lack of doctors, who are absorbed into the higher-paying private health sector (art. 12).

The Committee recommends that Hong Kong, China, adopt a national mental health policy aimed at making mental health services available and accessible, in particular by adopting legislation that is in line with international standards and by training skilled personnel in this area. The Committee also recommends that Hong Kong, China, develop community-based mental health-care services. In addition, the Committee recommends that Hong Kong, China, adopt measures to provide the public health sector with a sufficient number of doctors and other medical personnel.

Access to education

51. The Committee is concerned about the information provided by Hong Kong, China, in its replies to the list of issues (E/C.12/CHN/Q/2/Add.2, para. 90) that the Education Bureau for schooling takes decisions on the school enrolment of children of migrants after consultation with the Director of Immigration. The Committee also notes with concern that, despite the measures adopted by Hong Kong, China, to ensure equal access to 12 years of free education, children of ethnic minorities continue to face discrimination in that respect (arts. 13 and 14).

The Committee recommends that Hong Kong, China, ensure, through legislative and other measures, that all children, including children of migrants, asylum-seekers and refugees and children belonging to ethnic minorities, have free access to compulsory education on an equal basis with other children. The Committee also recommends that the State party take steps to facilitate their access to secondary education.

Chinese language

52. The Committee is concerned that, despite the recent measures adopted by Hong Kong, China, on the Chinese Language Curriculum second language Learning Framework and the allocation of additional funding to support the learning of Chinese, non-Chinese speaking students continue to be de facto discriminated against in the public education system (arts. 13 and 14).

The Committee recommends that Hong Kong, China, urgently take all necessary measures to eliminate de facto discrimination against non-Chinese speaking students, including by the reallocation of resources, and to promote their access to education in mainstream schools. The Committee urges Hong Kong, China, to step up its efforts to implement legislation and policies on bilingual education at all levels of education and provide high-quality education in Chinese as a second language.

E. Principal subjects of concern and recommendations: Macao, China

National human rights institution

53. The Committee is concerned about the absence of an independent national human rights institution in Macao, China, with a broad mandate to promote and protect human rights, in compliance with the Paris Principles (art. 2).

The Committee recommends that Macao, China, establish an independent national human rights institution with a broad human rights mandate, including for economic,

social and cultural rights, in line with the Paris Principles, and provide it with adequate financial and human resources.

Non-discrimination

54. The Committee notes with concern that Macao, China has not yet adopted comprehensive anti-discrimination legislation and that widespread discrimination against migrants, as well as lesbian, gay, bisexual and transgender persons, persists in Macao, China, particularly in employment, health care, education and housing. The Committee also notes with concern that de facto discrimination against persons with disabilities persists, particularly in the field of employment (art. 2, para. 2).

The Committee urges Macao, China to consider the adoption of comprehensive anti-discrimination legislation, in compliance with article 2, paragraph 2, of the Covenant and taking into account the Committee's general comment No 20 (2009) on non-discrimination in economic, social and cultural rights. The Committee recommends that Macao, China, take all appropriate measures, including awareness-raising campaigns, to address the de facto discrimination against persons with disabilities.

Sexual harassment at the workplace

55. While noting that the Labour Affairs Bureau has been mandated to handle complaints against sexual harassment in the workplace, the Committee is concerned about the absence of specific legislation proscribing sexual harassment and about the lack of specific measures to raise awareness to eliminate sexual harassment (art. 7).

The Committee urges Macao, China, to introduce into its legislation an offence of sexual harassment in the workplace which carries sanctions proportionate to the severity of the offence. The Committee also recommends that Macao, China, ensure that victims can lodge complaints without fear of retaliation. The Committee recommends that Macao, China, take appropriate measures to raise public awareness of sexual harassment in the workplace.

Migrant domestic workers

56. The Committee is concerned at reports of unfavourable conditions of work faced by migrant workers, particularly migrant domestic workers, who are employed without formal contracts, excluded from receiving the minimum wage and from the social welfare system, and required to work long hours (arts. 7 and 9).

The Committee recommends that Macao, China, take all appropriate measures to ensure the effective and equal application of labour legislation to migrant workers, in order to guarantee their right to just and favourable conditions of work, as enshrined in article 7 of the Covenant.

57. Although the Basic Law states that citizens of Macao, China have the right to strike, the Committee is concerned about the absence of legislation to protect workers from retribution and that workers organizing or participating in a strike are at risk of dismissal (art. 8).

The Committee strongly recommends that, in line with its obligations under article 8 of the Covenant, Macao, China, take all necessary measures to ensure that workers enjoy their trade union rights without undue restrictions or interference.

Domestic violence

58. While noting that legislation on domestic violence is under consideration, the Committee is concerned about the prevalence of domestic violence in Macao, China, and regrets that domestic violence has not yet been recognized as a public offence (art. 10).

The Committee recommends that Macao, China speed up the process of adoption of specific legislation criminalizing domestic violence. The Committee calls on Macao, China, to take all necessary effective measures to prevent incidents of domestic violence, and to ensure that protective measures, including restraining orders and shelters, are effective and accessible to victims of domestic violence. The Committee also recommends that Macao, China, conduct media campaigns targeting all segments of the population, in particular law enforcement officials, with a view to changing society's attitudes regarding domestic violence.

Adequate housing

59. The Committee is concerned about the amendment to the Economic Housing Law, which replaced the long-term application system by an ad-hoc application system and which provides that once all available units are allocated, the remaining applicants will be dismissed and will have to apply again in the next application period (art. 11).

The Committee recommends that Macao, China, adopt all necessary measures to guarantee the right to adequate housing for everyone, in particular for all those in need of social housing and those who are no longer eligible for it. The Committee also urges Macao, China, to take appropriate measures to address the problem of the long waiting list for social housing. The Committee draws the attention of Macao, China to its general comment No. 4 (1991) on the right to housing.

Access to education

60. The Committee is concerned that free primary education is not provided to children of migrants in Macao, China. The Committee is also concerned that children with disabilities experience de facto discrimination and have limited access to inclusive education and to teachers trained specially to educate children with disabilities (art. 13 and 14).

In line with its previous recommendation (E/C.12/1/Add.107, para. 126), the Committee urges Macao, China, to adopt all necessary measures to ensure access to free compulsory education to all children in the State party, including children of migrants. The Committee also recommends that the State party take appropriate measures to guarantee an inclusive education for children with disabilities and to ensure that teachers are trained to educate them within regular schools.

F. Other recommendations

61. The Committee notes the absence of reliable statistics that would allow for an accurate assessment of the fulfilment of economic, social and cultural rights in the State party, including Hong Kong, China, and Macao, China.

The Committee urges the State party, including Hong Kong, China, and Macao, China, to develop systematic data collection and the production and use of statistics for human rights indicators, including for economic, social and cultural rights based upon such data. In this respect, the Committee refers the State party, including Hong Kong, China, and Macao, China, to the conceptual and methodological framework for human rights indicators developed by the Office of the United Nations High

Commissioner for Human Rights (HRI/MC/2008/3). The Committee requests the State party to include in its next periodic report statistical data on the enjoyment of each Covenant right, disaggregated by age, sex, ethnic origin, urban/rural population and other relevant status on an annual comparative basis.

62. **The Committee encourages the State party to consider signing and ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.**

63. **The Committee encourages the State party to ratify the International Covenant on Civil and Political Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the International Convention for the Protection of all Persons from Enforced Disappearance, as well as ILO Convention No. 189 (2011) concerning decent work for domestic workers.**

64. **The Committee requests the State party to disseminate the present concluding observations widely at all levels of society, and particularly among public officials, judicial authorities, lawmakers and civil society organizations, to translate them and publicize them as widely as possible and to inform the Committee in its next periodic report on the steps taken to implement them.**

65. **The Committee encourages the State party to engage all the relevant actors, including non-governmental organizations and other members of civil society, in discussion on the implementation of the present concluding observations at the national level and facilitate their participation prior to the submission of its next periodic report.**

66. **The Committee requests the State party to submit its next periodic report, in accordance with the guidelines adopted by the Committee in 2008 (E/C.12/2008/2), by 30 May 2019.**